



**Town of Tyngsborough
Board of Appeals**

Town Hall-25 Bryants Lane
Tyngsborough, Ma 01879-1003
(978) 649-2300, Ext. 112

Board of Appeals Minutes from August 9, 2007.

Board Members Present- Robb Kydd-Chairperson, Chris Mechalides, Gary Ralls, Eileen Farrell, Claire Cloutier, and Cheryl Bradley.

Brad M. Pacheco, 71 Mascuppic Trail, Assessors Map 32B, Lot 33, appeal Building Commissioner decision on a deny for a building permit for the construction of a dwelling which applicant feels that this lot is a grandfathered lot under M.G.L. C/40A, section 6. R-2 Zone, section 2.15.11.

Robb Kydd read into the record a Letter dated August 1, 2007 from Town Counsel, Charles Zaroulis requesting this hearing be continued to September 13, 2007. Motion to continued hearing to Sept. 13, 2007 at 6:30 PM by Chris Mechalides, seconded by Gary Ralls. Vote 5-0. Approved continuance.

Joanne Trudel- 81 Mascuppic Trail, Assessors Map 32B, parcel 16, Map 32B, parcel 16A, seeking to renew variance/special permit from November 1982 to replace pre-existing non-conforming single family dwelling that was destroyed by a fire. Request area, frontage, and side yard setbacks and special permit to alter, amend, change a pre-existing non-conforming residential dwelling damaged to fire. R-2 Zone, sections 2.15.22 and 2.15.23.

Legal notice read. Advertised in the Lowell Sun on July 26 & August 2, 2007. Application read. Motion to waive the reading of the abutter list by Chris Mechalides, seconded by Claire Cloutier. Vote 5-0. No challenges to the legal notice or abutter notification. Town Boards notified. No challenges to the legal notice or abutter notification.

Application presented by Atty. Pete Nicosia. Review of letter dated July 13, 2007 to the Board of Appeals of relief sought, facts, and law cases.

Pete Nicosia corrected the date of the fire from the date in his presentation. The fire was in 1974.

Atty for abutter Nicole Duey stated that there was an easement issue with the property and it is in Land Court.

Abutters speaking against the application were-

Atty. Sandra Boulet representing Nicole Duey.

Robert Gauthier, 87 Mascuppic Trail, concerns of obstruction his view and it's too crowded.

Edward Lapointe of 84 Mascuppic stated it would be too much congestion.

Gerard Richall, 94 Mascuppic stated it would obstruct his view.

Motion to close the public portion of the hearing by Claire Cloutier, seconded by Eileen Farrell. Vote 5-0.

Board members discussion of it's been too long to wait to replace this structure.

The Board felt that the documents presented did not prove that a dwelling existed. Assessor's cards refer to (RR) and the Attorney stated the RR referred to railroad car, with no dimensions ever shown. The Board found that since this small parcel is owned in common ownership with #27 it would not be treated as a separate parcel. The Board found that this residential area is already very congested and it would be a burden to the neighborhood to place a dwelling there. Even though a variance had been issued in 1982 it had no impact on this hearing.

Motion by Eileen Farrell to deny request for variance, seconded by Gary Ralls. Vote 5-0 Denied.

Motion by Eileen Farrell to deny request for special permit, seconded by Gary Ralls. Vote 5-0. Denied because of the time length to reconstruct the house and question of merger of lots 25,26,27.

Connell Construction Corp.- 74 Scribner Rd., Assessors Map 9, Parcel 17, Map 9 Parcel 49, request modification of variance dated May 30, 1985 as set forth in its decision for the two lots never to be further sub-divided. R-1 Zone.

Legal notice read. Advertised in the Lowell Sun on July 26 & August 2, 2007.

Application read. No challenges to the legal notice or abutter notification. Town Boards notified. Motion to waive the reading of the abutters list by Farrell, seconded by Mechalides. Vote 5-0.

Application presented by Atty. James Harrington.

Abutters speaking against the application.

Dave Denommee Chairperson on the Board of Appeals in 1985 stated that this decision properly advertised at that time, that there was much debate and documentation provided to the board. It was agreed that these two parcels of land would accommodate two homes and save

the existing integrity of these parcels. The remaining open space would remain and would be in the best interest of the Town and neighboring residential neighborhood.

Elizabeth Coughlin discussed the common driveway and the additional building may put stress on the existing wells and endanger turtles.

Other abutters speaking against the application were-

Michael O'Hare-16 Groton Rd.

Michael Johnson- 88 Scriber Rd.

Sharon Koning- 82 Scribner Rd.

All the above bought their land with the understanding this parcel would not be developed.

Other abutters speaking against the application were-

Joseph Beaudoin-92 Scribner Rd. concerns about the traffic, safety, and well issues.

Vincent Locicero-70 Scribner Rd., stated that this wasn't supposed to be sub-divided.

Board members read into the meeting Town Counsel C. Zaroulis letter dated 6-21-07 to Planning Board regarding his opinion.

Motion to close the public portion of the hearing by Claire Cloutier. Seconded by Eileen Farrell. Vote 5-0. Unanimous.

Motion by Claire Cloutier to deny request for modification of variance dated May 30, 1985 as set forth in its decision for the two lots never to be further sub-divided.

Seconded by Eileen Farrell. Vote 5-0, Application denied.

Reasons for Board for deny is based on the fact that it is not a good precedent to overturn a 1985 ZBA ruling concerning open space rulings.

Salvatore Lupoli DBA Sal's Kitchen Realty LLC, Industrial Way and Westford Rd.,

Assessors Map 21, parcel 2F, request for variance for front yard, lot area, side yard for the construction of restaurant with storage basement and office. Also, lease-able retail space. I-1 Zone, section 2.12.50.

Legal notice read. Advertised in the Lowell Sun on July 26 & August 2, 2007.

Application read. No challenges to the legal notice or abutter notification.

Application presented by Atty. Doug Hausler. Disclosed that he has worked with the Kydd family.

One abutter- Warren Allgrove spoke against the trees proposed in the 50' right of way and that was going to be removed. Questions about the easement. Ed Duffy there will be a 50 feet easement in the rear. Discussed the removal of landscaping. Traffic issues were discussed.

Board members discussion errors on the plans. The total square feet of building did not match the breakdown between restaurant and retail. The board gave them the option of having a vote or to correct the plan.

They agreed to correct the plan.

Motion to continue hearing by Ralls, seconded by Cloutier to Sept. 13, 2007. Vote 5-0.
Continued to September 13, 2007 at 6:30 PM.

Christopher & Sharon Milot, 44 Woodlawn St. Assessors Map 31 A, Map 121
Request for variance on the rear and side yard setbacks for the construction of an in-ground pool. R2 Zone, section 2.12.50.

Legal notice read. Advertised in the Lowell Sun on July 26 & August 2, 2007. Town Boards notified. Motion to waive the reading of the abutters list by Claire Cloutier, seconded by Chris Mechalides. Vote 5-0. No challenges to the legal notice or abutter notification.

Application presented by Chris & Sharon Milot.

No abutters present to speak for or against the application.

Motion to close the public portion of the hearing by Chris Mechalides, seconded by Gary Ralls, vote 5-0

Motion to approve application as submitted by Gary Ralls, seconded by Chris Mechalides, vote 5-0. Approved.

Other Business-

Approve minutes from July 12, 2007

Motion to approve minutes by Chris Mechalides, seconded by Ralls, Vote 5-0.

Motion to adjourn by Cloutier, seconded by Ralls, Vote 5-0.
10:30PM